

April 2, 2012

**DRAFT ADVISORY OPINION 12-02**

RE: Use of State Resources for soliciting charitable contributions

This opinion was initiated by the Select Committee on Legislative Ethics (committee).

**Questions Presented**

The committee has posed the following hypothetical: A legislator solicits charitable contributions and conducts fundraising activities on behalf of a recognized, nonpolitical, charitable organization to which the legislature does not belong. For purposes of this opinion, it is assumed that there is no “governmental purpose” for this activity as this term is traditionally used.<sup>1</sup>

If the legislator engages in the following activities, do they constitute violations under the Legislative Ethics Act.

- Use of the legislator’s legislative office in Juneau or his or her interim office for conducting these activities.
- Use of other state facilities such as a Legislative Information Office Conference room to hold meetings with or for the charitable organization.
- Use of the Legislative Affairs Agency print shop for printing needs.
- Use of the legislator’s staff to organize the meeting and facilitate activities connected to fund raising.
- Use of the Legislative Affairs Agency staff and equipment and services for meeting and teleconference functions.
- Use of the legislator’s office allowance account to pay for expenses associated with the activity such as meeting luncheon costs.

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<sup>1</sup> While this term is not defined in the statutes, its use generally involves a determination of whether the activity is necessary to allow a legislator to perform official duties. AS 24.60.030.

- Use of any other government assets associated with the above functions.

## **DISCUSSION**

The general rules for analyzing ethical conduct in the Alaska legislative arena are codified in AS 24.60.030(a). In particular to the facts of this case, the applicable statute states as follows: “A legislator or legislative employee may not use public funds, facilities, equipment, services, or another government asset or resource for a nonlegislative purpose, for involvement in or support of or opposition to partisan political activity, or for the private benefit of either the legislator, legislative employee, or another person . . . .” AS 24.60.030(a)(2).

In 1998, the Legislature amended AS 24.60.030 to exclude from this general tenet, among other things, a legislator from soliciting, accepting, or receiving a gift on behalf of a recognized, nonpolitical charitable organization. This language was considered to be a codification of Advisory Opinions 94-6 and 96-4.

In Advisory Opinion 94-6, the committee considered whether a volunteer could solicit contributions or pledges outside of working hours and outside of government buildings on behalf of a nonpolitical, nonprofit organization. The committee determined that even though on its face, AS 24.60.080(a) appeared to prohibit the solicitation of gifts, that a contribution solicited by a legislator to a charitable organization should be exempted when made to a recognized charitable organization. While cautioning about the potential for an appearance of impropriety, the committee also determined that a legislator could solicit a lobbyist for a donation to a recognized charitable organization even during the legislative session.

Subsequently, the committee was faced with whether a legislative employee would be in violation of the ethics code if he or she solicited donations (money, goods, and services) from businesses and individuals for a meeting of the executive committee of the National Conference of State Legislatures in Anchorage. In Advisory Opinion 96-4, the committee found that solicitations from businesses or employees for this purpose did not violate the legislative ethics code citing Advisory Opinion 94-6. In a rather unfortunate use of language, the committee went on find that the “. . . ethics code did not prohibit using legislative office space, staff, and other resources to solicit contributions to host a meeting of the executive committee of the National

Conference of State Legislatures.” In drawing this conclusion, the committee wrote “[t]he committee cannot say that preparations for the legislature to host a conference of a committee of the National Conference of State Legislatures constitute a nongovernmental purpose.” The implication of this statement could be interpreted to allow the use of legislative resources for any charitable endeavor.

It is our opinion that this is too broad a reading of Advisory Opinion 96-4. The facts of Advisory Opinion 96-4 are unique and stand for the proposition that a meeting of the executive committee of the National Conference of State Legislatures has a clear “governmental purpose” and is not in conflict with ethical constraints. AS 24.60.030(a)(2) prohibits the use of “public funds, facilities, equipment services, or other government asset for a nonlegislative purpose.” The use of public resources was justified in this opinion because the committee determined the use was for a “governmental purpose,” not because the cause was related to a recognized, nonpolitical charitable organization.

In 2001, the Legislature enhanced the exception to the general rule by allowing the solicitation, acceptance or receiving of gifts “in a state facility.” The testimony offered in support of the bill noted that this subsection was designed to address the annual Betty Fahrenkamp Golf Tournament held in the capital “and make it clear that the legislature has no objection to this use of the capitol and state resources.” Testimony of Joe Balash at the State Affairs Committee meeting on February 27, 2001. Again in 2006, the Legislature expanded the exception under AS 24.60.030(a)(2)(I) to include not only legislators but also legislative employees. The testimony offered in support of the bill noted that legislative employees more than likely sent out letters soliciting donations for the Betty Fahrenkamp Golf Tournament, organized by the legislature and held in the capital, and “If we want to allow the activity then it ought to be clear that it’s allowed.” Testimony of Senator Gene Therriault at the Senate State Affairs Committee meeting on March 21, 2006.

Although there are limited advisory opinions addressing this issue, the language in Advisory Opinion 11-02 appears to support this limited reading of Advisory Opinion 96-4. The committee was asked to determine if use of legislative newsletters and press releases to acknowledge and thank for-profit businesses and their agents for donating to charitable programs was ethically

permissible.<sup>2</sup> While holding that a mere acknowledgment and thanking a for-profit business for charitable contributions was not a “benefit” subject to ethical scrutiny, the committee emphasized that newsletters or press releases by legislators were state resources that could not be used for purpose of political fundraising or campaigning.<sup>3</sup>

With these principles in mind, and noting the specific facts of this request, which include a reference to a legislator who is soliciting charitable contributions and conducting fundraising activities on behalf of recognized, nonpolitical, charitable organizations to which the legislature does not belong,<sup>4</sup> we address the inquiries below:

**1. Use of a Legislative Office in Juneau or Interim Office to Conduct Such Activities.**

This issue is governed by the provisions in AS 24.60.030(a)(2), AS 24.60.030(a)(2)(A), AS 24.60.030(a)(2)(D) and AS 24.60.030(a)(2)(I).

AS 24.60.030(a)(2) A legislator or legislative employee may not use public funds, facilities, equipment, services, or another government asset or resource for a nonlegislative purpose, for involvement in or support of or opposition to partisan political activity, or for the private benefit of either the legislator, legislative employee, or another person; this paragraph does not prohibit . . .

(A) limited use of state property and resources for personal purposes if the use does not interfere with the performance of public duties and either the cost or value related to the use is nominal or the legislator or legislative employee reimburses the state for the cost of the use; . . .

(D) a legislator from using the legislator’s private office in the capital city during a legislative session, and for the 10 days immediately before and the 10 days immediately after a legislative session, for nonlegislative purposes if the use does not interfere with the performance of public duties and if there is no cost to the state for the use of the space and equipment, other than utility costs and nominal wear and tear, or the legislator promptly reimburses the state for the cost; and office is considered a legislator’s private

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<sup>2</sup> AO 11-2 at p. 1.

<sup>3</sup> AO 11-2 at p. 3.

<sup>4</sup> The propriety of this conduct is controlled by Advisory Opinions 94-6 and 96-4, and the specific language that appears in AS 24-60.030(a)(2)(I) and AS 24.60.080(g).

office under this subparagraph if it is the primary space in the capital city reserved for use by the legislator, whether or not it is shared with others; . . .

(I) a legislator or legislative employee from soliciting, accepting, or receiving a gift on behalf of a recognized, nonpolitical charitable organization in a state facility;

The language of AS 24.60.030(a)(2) does not allow the use of a legislator's office to solicit contributions absent an exception found in Section (A), Section (D), or Section (I). Use of the legislative office (a state resource) to conduct the stated activities would be for a non-legislative purpose in violation of AS 24.60.030(a)(2). The question remains, are there statutory exceptions to this apparent ethical violation? We conclude there are two recognized exceptions which would allow this activity: AS 24.60.030(a)(2)(D) which allows limited use of a legislative office during session, and shortly before and after session, so long as it does not interfere with the legislator's performance of his duties; and AS 24.60.030(a)(2)(I) which allows a legislator to solicit charitable contributions in a state facility.

The exception found in AS 24.60.030(a)(2)(A) only applies to "limited use of state property and resources for *personal purposes* . . . ." (emphasis added.) Since the use of the legislative office would not be for personal purposes, this exception would not apply to these facts. On the other hand, the exceptions found in AS 24.60.030(a)(2)(D) and (I) do appear to apply to allow this conduct. For instance, AS 24.60.030(a)(2)(D) permits an exception to the general rule of not using state resources for non-governmental purposes by allowing the use of a legislator's private office in Juneau during the session, and ten days before and after the session, for non-legislative purposes. This activity is allowed "if the use does not interfere with the performance of public duties and if there is no cost to the state for the use of space and equipment, other than utility costs and minimal wear and tear, or the legislator promptly reimburses the state for the cost."<sup>5</sup> The use of a legislator's office shortly before, during, and shortly after the legislative session for purposes of soliciting charitable contributions on behalf of a recognized, nonpolitical, charitable organization appears to fall within the terms of this exception.

Likewise, AS 24.60.030(a)(2)(I), exempts the activities of a legislator who *solicits*, accepts, or receives a gift on behalf of a recognized, nonpolitical charitable organization *in a state facility*.

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<sup>5</sup> AS 24.60.030(a)(2)(D).

The language of this exception also appears to support use of a legislator's office for soliciting charitable contributions. Under the language of either statute, it appears that it would not be a violation of the Legislative Ethics Act to use a legislator's legislative office for soliciting charitable contributions within the restraints noted above.

## **2. Use of the Legislative Affairs Agency Print Shop for Printing Needs to Assist in Such Activities.**

The use of the Legislative Affairs Agency Print Shop for printing needs related to soliciting charitable contributions would constitute a use of "public funds, facilities, equipment, services for a nonlegislative purpose."<sup>6</sup> As such, it would constitute a violation of the Legislative Ethics Act unless there was a noted exception. There are no statutory exemptions found in AS 24.60.030 that would allow the use of the Legislative Affairs Agency resources for soliciting charitable contributions.

The language of AS 24.60.030(a)(2)(I) only exempts the stated activities of a legislator or a legislative employee from soliciting, accepting, or receiving a gift, but does not apply to the use of other state resources. We do not read the language of AS 24.60.030(a)(2)(I) as allowing the use of state resources for non-legislative purposes and find no support for this reading in the legislative history of the statute.

## **3. Use of the Legislator's Staff to Organize the Meeting and Facilitate Activities Connected to the Fundraising.**

Next, we are asked whether the use of a legislator's staff to organize a meeting and facilitate activities connected to fund raising for charitable contributions violates the Legislative Ethics Act. While a legislator's staff employee could be considered a state resource under certain circumstances, we do not take that position in this opinion for two reasons. First, both AS 24.60.030 and AS 24.60.080 talk in terms of "legislators or legislative employees" in identifying prohibited activities. Second, AS 24.60.030(a)(2) does not reference staff in the types of things that constitute governmental assets or resources (A legislator or legislative employee may not...use *public funds, facilities, equipment, services or another governmental asset or*

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<sup>6</sup> AS 24.60.030(a)(2).

*resource...”)(Emphasis added.)* These references lead us to believe that a legislator’s staff should not be considered a state resource.<sup>7</sup>

Because it is not unethical under the act for a legislator or legislative employee to solicit a gift, the answer to this question is whether organizing or facilitating activities connected with fund raising constitutes “soliciting” under the statute. A narrow interpretation of this term might preclude such activity while a broader interpretation would arguably allow such conduct. Merriam Webster’s dictionary defines “solicit” as “to approach with a request or plea.”

We interpret the term “solicit” literally and narrowly under these circumstances. The first stated purpose of the Legislative Ethics Act is high moral and ethical standards among public servants.<sup>8</sup> Additionally, there is a substantial interest in seeing that legislators and legislative employees conduct the public’s business in a manner that preserves the integrity of the legislative process and avoids conflicts of interest or even appearances of conflicts of interest.<sup>9</sup> Clearly the legislature has approved its legislators and staff asking for gifts for recognized, nonpolitical charitable organizations. But any activities beyond merely asking for gifts or accepting or receiving gifts on behalf of a charitable organization gives the perception at least of conflicts of interest and impugns the integrity of the legislative process and should be avoided. Therefore, while it is permissible to actually solicit or ask for contributions on behalf of recognized, nonpolitical charitable organizations, we conclude more than that is not ethically permissible.

#### **4. Use of the Legislative Affairs Agency Staff and Equipment and Services for Meeting and Teleconference Functions.**

See analysis in Sections 2 and 3 above.

#### **5. Use of the Legislator’s Staff and Equipment and Services for Meeting and Teleconference Functions.**

See analysis in Sections 2 and 3 above.

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<sup>7</sup> Legislative staff still are required to abide by the Legislative Ethics Act. See AS 24.60.

<sup>8</sup> AS 24.60.010(1).

<sup>9</sup> AS 24.60.010(2).

**6. Use of the Legislator's Office Allowance Account to Pay for Expenses Associated with the Activity Such As Meeting Luncheon Costs.**

See analysis in Section 2 above.

**7. Use of any Other Government Asset Associated with any of the Above Functions.**

See analysis in Section 2 above.

**CONCLUSION**

While the general rule under AS 24.60.030(a)(2) continues to prohibit the use of state resources for nongovernmental purposes, there are recognized exceptions for the use of a legislator's office during the 10 days before, during and the 10 days after session. One example would be soliciting charitable contributions on behalf of a recognized, nonpolitical, charitable organization. Additionally, a legislator and his staff are allowed to solicit gifts on behalf of recognized, nonpolitical charitable organizations without violating Alaska's Legislative Ethics Act. But we interpret the term "solicit" narrowly under these circumstances. Any activities beyond asking for gifts or accepting or receiving gifts on behalf of charitable organizations are not permitted. On the other hand, soliciting, accepting, and receiving contributions for a meeting of a nonprofit organization that has a clear "governmental purpose" are permitted. As noted in prior advisory opinions, care should be taken to avoid appearances of impropriety even if conduct is not prohibited by the ethics code.<sup>10</sup> Similar admonitions are applicable in the situations outlined in this opinion.

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<sup>10</sup> AO 94-6 at p. 5 ("The committee notes that the potential for appearance of impropriety is high when legislators and legislative employees request favors of lobbyists, even on behalf of worthwhile organizations. The committee therefore urges you to use caution in making a decision about whether to approach a lobbyist, especially during a legislative session."). AO 96-4 at p. 3. (As the committee noted in Advisory Opinion 94-6, care should be taken in requesting donations from lobbyists. Although the logical conclusion of this opinion does not prohibit requesting lobbyists to contribute to the conference, the particular interest that a lobbyist may have in securing the good will of a legislative office suggests that soliciting a lobbyist for donations may give rise to the appearance of impropriety even if the solicitation is not prohibited by the ethics code.")



Adopted by the Select Committee on Legislative Ethics on June 14, 2012

Members present and concurring in this opinion were:

Herman G. Walker, Chair	yes	no	absent
Representative Craig Johnson	yes	no	absent
Representative Chris Tuck	yes	no	absent
Senator Gary Stevens	yes	no	absent
Senator Donny Olson	yes	no	absent
Dennis (Skip) Cook	yes	no	absent
Antoinette (Toni) Mallott	yes	no	absent
H. Conner Thomas	yes	no	absent
Gary J. Turner	yes	no	absent